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APR 29 2005

OFFICE OF PETITIONS

In re Application of :
Adamo Sala :
Application No. 10/602,118 :
Filed: June 23, 2003 : ON PETITION
Attorney Docket Number: :
50046290-0017 :

This is a decision on the Petition to Correct Reference to Prior Non-Provisional Applications [37 CFR Sec. 1.78(a)(3)], filed January 5, 2005. The petition is filed to accept an unintentionally delayed claim under 35 U.S.C. § 365(c) for the benefit of a prior-filed international application designating the United States of America (Application No. PCT/US00/14818, filed May 26, 2000).

The petition is dismissed for the reasons stated below.

A review of the amendment to the specification filed with the instant petition reveals that the amendment is improper. In relevant part, the amendment reads as follows:

09/322,700, filed May 10, 2002, which is the National Stage of International Application No. PCT/US00/14818, which is a continuation-in-part of U.S. Application No. 09/322,700 filed May 28, 1999....

The amendment seeks to have US Application serial number 09/322,700 claim priority as a continuation-in-part to itself, and as such, is improper.

A further review of the amendment and petition reveals that Applicant may be attempting to insert priority as follows:

This invention is a continuation-in-part of U.S. Application No. 09/980,062, filed May 10, 2002, which was the National Stage of International Application No. PCT/US00/14818, which is a continuation-in-part of U.S. Application No. 09/322,700 filed May 28, 1999, now U.S. Patent 6, 172,040....

At the filing of this petition, Office records reflected that the above-identified application is a continuation-in-part of application 09/980,062, which is a continuation-in-part of

09/322,700. Office records, however, failed to note that application 09/980,062 was the National Stage of International Application No. PCT/US00/14818, which is a continuation-in-part of U.S. Application No. 09/322,700 filed May 28, 1999, now U.S. Patent 6, 172,040. Office records have been corrected to reflect this relationship.

Furthermore, as set forth in the Manual for Patent Examining Procedure ("MPEP") 1893.03(c), page 1800-149, a national stage application filed under 35 U.S.C. § 371 may not claim benefit of the filing date of the international application of which it is the national stage since its filing date is the date of filing of that international application. See, also, MPEP 1893.03(b). Accordingly, it is not necessary for the applicant to amend the first sentence of the specification to reference the international application number that was used to identify the application during international processing of the application by the international authorities prior to commencement of the national stage under 35 U.S.C. § 371.

A corrected Filing Receipt, which includes the relationship to the PCT application, accompanies this decision on petition.

A refund of the petition fee has been scheduled.

The file is being referred to Technology Center Art Unit 1654 for continued examination in due course.

Telephone inquiries concerning this decision should be directed to the Petitions Attorney Derek L. Woods at (571) 272-3232.

A handwritten signature in cursive script, reading "Frances Hicks".

Frances Hicks
Lead Petitions Examiner
Office of Petitions